

REFERENCE TITLE: identity theft; credit rating; notice

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2223

Introduced by
Representatives Nelson: Downing

AN ACT

AMENDING SECTIONS 13-105, 13-2008, 13-2009 AND 13-2010, ARIZONA REVISED
STATUTES; RELATING TO IDENTITY THEFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-105, Arizona Revised Statutes, is amended to
3 read:

4 13-105. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Act" means a bodily movement.

7 2. "Benefit" means anything of value or advantage, present or
8 prospective.

9 3. "Calendar year" means three hundred sixty-five days' actual time
10 served without release, suspension or commutation of sentence, probation,
11 pardon or parole, work furlough or release from confinement on any other
12 basis.

13 4. "Community supervision" means that portion of a felony sentence
14 imposed by the court pursuant to section 13-603, subsection I and served in
15 the community after completing a period of imprisonment or served in prison
16 in accordance with section 41-1604.07.

17 5. "Conduct" means an act or omission and its accompanying culpable
18 mental state.

19 6. "Crime" means a misdemeanor or a felony.

20 7. "Criminal street gang" means an ongoing formal or informal
21 association of persons whose members or associates individually or
22 collectively engage in the commission, attempted commission, facilitation or
23 solicitation of any felony act and ~~who~~ THAT has at least one individual who
24 is a criminal street gang member.

25 8. "Criminal street gang member" means an individual to whom two of
26 the following seven criteria that indicate criminal street gang membership
27 apply:

28 (a) Self-proclamation.

29 (b) Witness testimony or official statement.

30 (c) Written or electronic correspondence.

31 (d) Paraphernalia or photographs.

32 (e) Tattoos.

33 (f) Clothing or colors.

34 (g) Any other indicia of street gang membership.

35 9. "Culpable mental state" means intentionally, knowingly, recklessly
36 or with criminal negligence as those terms are thusly defined:

37 (a) "Intentionally" or "with the intent to" means, with respect to a
38 result or to conduct described by a statute defining an offense, that a
39 person's objective is to cause that result or to engage in that conduct.

40 (b) "Knowingly" means, with respect to conduct or to a circumstance
41 described by a statute defining an offense, that a person is aware or
42 believes that his or her conduct is of that nature or that the circumstance
43 exists. It does not require any knowledge of the unlawfulness of the act or
44 omission.

1 (c) "Recklessly" means, with respect to a result or to a circumstance
2 described by a statute defining an offense, that a person is aware of and
3 consciously disregards a substantial and unjustifiable risk that the result
4 will occur or that the circumstance exists. The risk must be of such nature
5 and degree that disregard of such risk constitutes a gross deviation from the
6 standard of conduct that a reasonable person would observe in the situation.
7 A person who creates such a risk but is unaware of such risk solely by reason
8 of voluntary intoxication also acts recklessly with respect to such risk.

9 (d) "Criminal negligence" means, with respect to a result or to a
10 circumstance described by a statute defining an offense, that a person fails
11 to perceive a substantial and unjustifiable risk that the result will occur
12 or that the circumstance exists. The risk must be of such nature and degree
13 that the failure to perceive it constitutes a gross deviation from the
14 standard of care that a reasonable person would observe in the situation.

15 10. "Dangerous drug" means dangerous drug as defined by section
16 13-3401.

17 11. "Dangerous instrument" means anything that under the circumstances
18 in which it is used, attempted to be used or threatened to be used is readily
19 capable of causing death or serious physical injury.

20 12. "Deadly physical force" means force which is used with the purpose
21 of causing death or serious physical injury or in the manner of its use or
22 intended use is capable of creating a substantial risk of causing death or
23 serious physical injury.

24 13. "Deadly weapon" means anything designed for lethal use, ~~—The term~~
25 ~~includes~~ INCLUDING a firearm.

26 14. "Economic loss" means any loss incurred by a person as a result of
27 the commission of an offense. Economic loss includes lost interest, lost
28 earnings, LOST OR REDUCED CREDIT RATING AS A RESULT OF A VIOLATION OF SECTION
29 13-2008, 13-2009 OR 13-2010 and other losses ~~which~~ THAT would not have been
30 incurred but for the offense. Economic loss does not include losses incurred
31 by the convicted person, damages for pain and suffering, punitive damages or
32 consequential damages.

33 15. "Enterprise" includes any corporation, association, labor union or
34 other legal entity.

35 16. "Felony" means an offense for which a sentence to a term of
36 imprisonment in the custody of the state department of corrections is
37 authorized by any law of this state.

38 17. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
39 rifle, shotgun or other weapon which will or is designed to or may readily be
40 converted to expel a projectile by the action of expanding gases, except that
41 it does not include a firearm in permanently inoperable condition.

42 18. "Government" means the state, any political subdivision of the
43 state or any department, agency, board, commission, institution or
44 governmental instrumentality of or within the state or political subdivision.

1 19. "Government function" means any activity which a public servant is
2 legally authorized to undertake on behalf of a government.

3 20. "Intoxication" means any mental or physical incapacity resulting
4 from use of drugs, toxic vapors or intoxicating liquors.

5 21. "Misdemeanor" means an offense for which a sentence to a term of
6 imprisonment other than to the custody of the state department of corrections
7 is authorized by any law of this state.

8 22. "Narcotic drug" means narcotic drugs as defined by section 13-3401.

9 23. "Offense" or "public offense" means conduct for which a sentence to
10 a term of imprisonment or of a fine is provided by any law of the state in
11 which it occurred or by any law, regulation or ordinance of a political
12 subdivision of that state and, if the act occurred in a state other than this
13 state, it would be so punishable under the laws, regulations or ordinances of
14 this state or of a political subdivision of this state if the act had
15 occurred in this state.

16 24. "Omission" means the failure to perform an act as to which a duty
17 of performance is imposed by law.

18 25. "Peace officer" means any person vested by law with a duty to
19 maintain public order and make arrests.

20 26. "Person" means a human being and, as the context requires, an
21 enterprise, a public or private corporation, an unincorporated association, a
22 partnership, a firm, a society, a government, a governmental authority or an
23 individual or entity capable of holding a legal or beneficial interest in
24 property.

25 27. "Petty offense" means an offense for which a sentence of a fine
26 only is authorized by law.

27 28. "Physical force" means force used upon or directed toward the body
28 of another person and includes confinement, but does not include deadly
29 physical force.

30 29. "Physical injury" means the impairment of physical condition.

31 30. "Possess" means knowingly to have physical possession or otherwise
32 to exercise dominion or control over property.

33 31. "Possession" means a voluntary act if the defendant knowingly
34 exercised dominion or control over property.

35 32. "Property" means anything of value, tangible or intangible.

36 33. "Public servant":

37 (a) Means any officer or employee of any branch of government, whether
38 elected, appointed or otherwise employed, including a peace officer, and any
39 person participating as ~~AN~~ advisor, ~~OR~~ consultant or otherwise in performing
40 a governmental function. ~~The term~~

41 (b) Does not include jurors or witnesses. ~~Public servant~~

42 (c) Includes those who have been elected, appointed, employed or
43 designated to become a public servant although not yet occupying that
44 position.

34. "Serious physical injury" includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

35. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

36. "Vehicle" means a device in, upon or by which any person or property is or may be transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

37. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

38. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

Sec. 2. Section 13-2008, Arizona Revised Statutes, is amended to read:

13-2008. Taking identity of another person or entity; civil penalty; classification

A. A person commits taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense.

B. On the request of a person or entity, a peace officer in any jurisdiction in which an element of the offense is committed, a result of the offense occurs or the person or entity whose identity is taken resides or is located shall take a report. The peace officer may provide a copy of the report to any other law enforcement agency that is located in a jurisdiction in which a violation of this section occurred.

C. If a defendant is alleged to have committed multiple violations of this section within the same county, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any precinct in which a violation is alleged to have occurred. If a defendant is alleged to have committed multiple violations of this section within the state, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in any county in which a violation is alleged to have occurred.

D. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

E. AT THE TIME A PROSECUTOR FILES A COMPLAINT CHARGING A VIOLATION OF THIS SECTION, THE PROSECUTOR SHALL NOTIFY APPROPRIATE CONSUMER REPORTING AGENCIES AS DEFINED IN SECTION 44-1691 THAT A PERSON HAS BEEN THE VICTIM OF AN ALLEGED OFFENSE IN VIOLATION OF THIS SECTION. ON CONVICTION AND AFTER A FINDING THAT THE VICTIM'S CREDIT RATING WAS IMPACTED AS A RESULT OF THE OFFENSE, THE PROSECUTOR SHALL NOTIFY APPROPRIATE CONSUMER REPORTING AGENCIES AS DEFINED IN SECTION 44-1691 THAT THE PERSON WAS THE VICTIM OF AN OFFENSE IN VIOLATION OF THIS SECTION. IF AFTER NOTIFICATION THE CONSUMER REPORTING AGENCY FAILS TO REINSTATE THE VICTIM'S IMPACTED CREDIT RATING, THE CONSUMER REPORTING AGENCY IS SUBJECT TO A CIVIL PENALTY OF FIVE HUNDRED DOLLARS.

~~E.~~ F. Taking the identity of another person or entity is a class 4 felony.

Sec. 3. Section 13-2009, Arizona Revised Statutes, is amended to read:
13-2009. Aggravated taking identity of another person or entity; civil penalty; classification

A. A person commits aggravated taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of either:

1. Five or more other persons or entities, including real or fictitious persons or entities, without the consent of the other persons or entities, with the intent to obtain or use the other persons' or entities' identities for any unlawful purpose or to cause loss to the persons or entities whether or not the persons or entities actually suffer any economic loss.

2. Another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose and causes another person or entity to suffer an economic loss of three thousand dollars or more.

B. In an action for aggravated taking the identity of another person or entity under subsection A, paragraph 1 of this section, proof of possession out of the regular course of business of the personal identifying information or entity identifying information of five or more other persons or entities may give rise to an inference that the personal identifying information or entity identifying information of the five or more other persons or entities was possessed for an unlawful purpose.

C. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

D. AT THE TIME A PROSECUTOR FILES A COMPLAINT CHARGING A VIOLATION OF THIS SECTION, THE PROSECUTOR SHALL NOTIFY APPROPRIATE CONSUMER REPORTING AGENCIES AS DEFINED IN SECTION 44-1691 THAT A PERSON HAS BEEN THE VICTIM OF AN ALLEGED OFFENSE IN VIOLATION OF THIS SECTION. ON CONVICTION AND AFTER A FINDING THAT THE VICTIM'S CREDIT RATING WAS IMPACTED AS A RESULT OF THE OFFENSE, THE PROSECUTOR SHALL NOTIFY APPROPRIATE CONSUMER REPORTING AGENCIES

AS DEFINED IN SECTION 44-1691 THAT THE PERSON WAS THE VICTIM OF AN OFFENSE IN VIOLATION OF THIS SECTION. IF AFTER NOTIFICATION THE CONSUMER REPORTING AGENCY FAILS TO REINSTATE THE VICTIM'S IMPACTED CREDIT RATING, THE CONSUMER REPORTING AGENCY IS SUBJECT TO A CIVIL PENALTY OF FIVE HUNDRED DOLLARS.

~~D.~~ E. Aggravated taking the identity of another person or entity is a class 3 felony.

Sec. 4. Section 13-2010, Arizona Revised Statutes, is amended to read:

~~13-2010.~~ Trafficking in the identity of another person or entity; civil penalty; classification

A. A person commits trafficking in the identity of another person or entity if the person knowingly sells, transfers or transmits any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of the other person or entity for any unlawful purpose or to cause loss to the person or entity whether or not the other person or entity actually suffers any economic loss.

B. This section does not apply to a violation of section 4-241 by a person who is under twenty-one years of age.

C. AT THE TIME A PROSECUTOR FILES A COMPLAINT CHARGING A VIOLATION OF THIS SECTION, THE PROSECUTOR SHALL NOTIFY APPROPRIATE CONSUMER REPORTING AGENCIES AS DEFINED IN SECTION 44-1691 THAT A PERSON HAS BEEN THE VICTIM OF AN ALLEGED OFFENSE IN VIOLATION OF THIS SECTION. ON CONVICTION AND AFTER A FINDING THAT THE VICTIM'S CREDIT RATING WAS IMPACTED AS A RESULT OF THE OFFENSE, THE PROSECUTOR SHALL NOTIFY APPROPRIATE CONSUMER REPORTING AGENCIES AS DEFINED IN SECTION 44-1691 THAT THE PERSON WAS THE VICTIM OF AN OFFENSE IN VIOLATION OF THIS SECTION. IF AFTER NOTIFICATION THE CONSUMER REPORTING AGENCY FAILS TO REINSTATE THE VICTIM'S IMPACTED CREDIT RATING, THE CONSUMER REPORTING AGENCY IS SUBJECT TO A CIVIL PENALTY OF FIVE HUNDRED DOLLARS.

~~C.~~ D. Trafficking in the identity of another person or entity is a class 2 felony.